

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 16 2001

In the Matter of

DOCKET FILE NO. 99-318 ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Panama City, Florida)

)
)
)
)
)

MM Docket No. 99-318
RM-9745

To: Chief, Video Services Division

SUPPLEMENT TO PETITION FOR RULE MAKING

Waitt License Company of Florida, Inc. ("Waitt"), licensee of Station WPGX(TV), Panama City, Florida, by its attorney and pursuant to the *Report and Order* and *Further Notice of Proposed Rule Making* in *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC-01-24, MM Docket No. 00-39, released January 19, 2001 (the "*DTV Order*"), hereby supplements its pending petition for rule making in the captioned proceeding as detailed in the annexed Engineering Statement of Bernard R. Segal, P.E.

This Supplement eliminates the mutual exclusivity between WPGX's DTV proposal and that of another entity. The conclusion of this rule making will enable Waitt to promptly commence new digital television service on Channel 9 to Panama City. This filing therefore serves the public interest and the Commission's DTV policy objectives.

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Waitt has proposed the substitution of DTV Channel 9 for its assigned DTV Channel 29. By *Notice of Proposed Rule Making*, 14 FCC Rcd 18555 (1999), the Chief, Video Services Division, determined that the channel change merits consideration and set December 23, 1999 as the comment deadline. On December 22, Emmis Television License Corporation of Mobile, licensee of Station WALA(TV), Mobile, Alabama ("Emmis"), proffered "Comments" opposing the change.¹ Based on a maximization amendment submitted one day earlier for WALA's allotted DTV Channel 9, Emmis argued that the WPGX-DT proposal, by then on file for six months, would impermissibly interfere with WALA-DT operating at maximum facilities. Waitt has strenuously disputed this claim. The net result is that, well over a year later, both Waitt's rule making proposal and Emmis's maximization amendment are still pending.²

In the *DTV Order*, at paras. 47-48, 52, 54, the Commission set out its methodology for resolving conflicts between later DTV expansion applications and earlier-filed DTV rule making petitions. The Commission considers the proposals mutually exclusive and requires that the parties resolve the mutual exclusivity within a specified period or both will be dismissed. This Supplement accomplishes this agency's objective and permits the early grant of both the WPGX-DT rule making and the WALA-DT maximization amendment.

¹ Another entity filed similar "Comments" on the same date, but has since withdrawn them.

² It is a matter of record that Waitt has sought repeatedly to settle this matter, including requesting that the Chief, Television Branch, mediate the disagreement. See *DTV Order*, para. 47. These efforts have been

To paraphrase its argument, Emmis asserts that, as a consequence of its maximization amendment, the WPGX-DT proposal would cause interference to more than 2% of the baseline population of WALA-DT's allotted replication facilities. See Engineering Statement at 1. Although Waitt disagrees that the claim is consistent with DTV policy, this Supplement employs Emmis's own rationale as a means of terminating the conflict. The details are contained in the Engineering Statement; here is a summary of its highlights.

Waitt supplements its captioned rule making petition by proposing to operate WPGX from a new tower nearby Panama City (but situated further from Mobile), and utilizing a directional antenna, with maximum ERP of 130 kW and antenna HAAT of 264 meters.³ This results in predicted interference to a maximized WALA-DT of 1.9% of its allotted baseline population of 1,008,000 persons, and does not create new interference exceeding 2% to any station. Engineering Statement at 2-5. While WPGX-DT will receive interference from WALA-DT in excess of 2% (9055 persons out of a total population of 301,311), Waitt hereby agrees to accept such interference since it will result in interference-free service within WPGX-DT's 36 dBu contour to 292,256 persons, over 80,000 above its Channel 29 replication population.

rebuffed by Emmis, which is presently operating WALA-DT with its replication facilities pursuant to special temporary authority.

³ Coordinates for the tower are 30° 13' 45" N. Lat; 85° 23' 20" W. Long. The structure is FAA approved and has been registered.

This Supplement meets both the letter and spirit of the *DTV Order*, *see, e.g.*, paras. 47-48, 54, which permits modifications like this one to be submitted in order to eliminate mutual exclusivity. This proposal resolves the conflict between Emmis and Waitt and, by Emmis's own rationale, allows WPGX-DT to operate on DTV Channel 9 without causing impermissible interference to any station. Most importantly, it hastens the initiation of new DTV service in Panama City as well as expanded DTV service in Mobile. Indisputably the public interest is advanced by this proposal.⁴

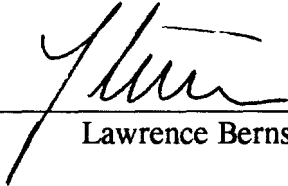
Waitt again advises the Commission that, when this rule making is granted, it will promptly file an application for modification of WPGX's license and, when the application is granted, commence construction of the new facilities. Given the length of time since the WPGX-DT petition was filed, nearly two years ago, and the looming deadline for initiation of new DTV service, Waitt respectfully urges the Video Services Division to act expeditiously in resolving this matter.

⁴ Waitt has petitioned to deny the WALA maximization amendment. Upon the grant of this rule making as supplemented, Waitt will withdraw its protest.

WHEREFORE, for these reasons, the WPGX-DT proposal for Channel 9, as supplemented, should be approved.

Respectfully submitted,

**WAITT LICENSE COMPANY OF
FLORIDA, INC.**

By:  _____
Lawrence Bernstein

Its Attorney

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Attachment

April 16, 2001

BERNARD R. SEGAL, P. E.
CONSULTING ENGINEER
KENSINGTON, MARYLAND

ENGINEERING STATEMENT
AMENDED PETITION FOR RULE MAKING
WAITT LICENSE COMPANY OF FLORIDA, INC.
PANAMA CITY, FLORIDA

Waitt License Company of Florida, Inc (hereafter, Waitt). is the proponent in MM Docket No.99-318, RM-9745, for the allotment of VHF Channel 9 to Panama City, Florida, in substitution of the current allotment of UHF Channel 29. Waitt's pending proposal specifies use of a directional antenna with maximum effective radiated power of 100 kW and antenna radiation center height above average terrain of 207 meters for use by station WPGX-DT.

A concurrently pending application by Emmis Television Corporation of Mobile (hereafter, Emmis) seeks maximization of the facilities for station WALA-DT, Mobile, Alabama, in BPCDT-19991028AEO. The Emmis maximization proposal is for operation on Channel 9 with effective radiated power of 124 kW and antenna radiation center height of 346 meters above average terrain. The FCC considers the Waitt proposal and the Emmis maximization application to be mutually exclusive.

Emmis has submitted Comments in the Panama City Rule Making proceeding alleging that the Waitt proposal for WPGX would cause impermissible interference to the maximization proposal for WALA-DT. Emmis asserts that the interference caused by the Rule Making proposal would exceed 2% of the baseline population for the allotted replication facilities for WALA-DT because of interference caused to the maximization proposal beyond the extent of the original allotment. Waitt disagrees with the Emmis

contention that it is entitled to this protection and the respective parties' proposals remain pending before the FCC.

However, in order to resolve this matter and to conclude the Panama City Rule Making proceeding, Waitt now amends its proposal in the manner described herein. The amended WPGX-DT proposal reduces the predicted interference to the Emmis maximization proposal to 1.9% of the allotment baseline population for WALA-DT of 1,008,000 persons, while yet avoiding creation of new interference to any station that exceeds the 2% de minimis criterion. While the interference received from the WALA-DT maximization proposal will exceed 2%, Waitt agrees to accept that interference since it would still permit WPGX-DT to provide greater overall interference-free service than could be achieved with the original Channel 29 allotment facilities.

Waitt now proposes to operate from the site of a new tower to be constructed near Panama City. The site coordinates are: 30° 13' 45" North Latitude; 85° 23' 20" West Longitude (NAD 27). FAA approval for the structure has been received, and the structure has been registered. The ASR number is 1207739. The radiation center for the proposed WPGX-DT antenna will be 260 meters above ground level, 282 meters above mean sea level. The maximum effective radiated power will be 130 kW and the antenna radiation center height above average terrain will be 264 meters. A directional antenna will be employed.

The antenna will be a Dielectric, type THA-SP4-4/11-1. The azimuth pattern for the antenna is provided in Figure 1. The tabulation of relative radiation values for the antenna is included as Figure 2. Figure 3 is the vertical plane, or elevation, pattern for the antenna.

The map of Figure 4 demonstrates encompassment of Panama City by the 43 dBu F(50,90) contour. The 43 dBu value for principal community encompassment is the newly adopted requirement for high band VHF DTV stations.

As to allocation concerns, only co-channel stations WALA-DT, Mobile, Alabama, and WTVM, Columbus, Georgia, merit discussion. The proposed WPGX-DT operation is predicted to cause interference to the WALA-DT maximization proposal to the extent of 19,100 persons, representing 1.9% of the replication allotment baseline population of 1,008,000 persons.

NTSC station WTVM is predicted to receive new interference from the WPGX-DT proposal to the extent of 13,200 persons representing 1.4% of the 945,000 persons within the station's Grade B contour that is not affected by terrain losses.

Station WTVM receives interference, also, from the WALA-DT maximization proposal. According to the information submitted as part of the Emmis application for WALA-DT, the interference to WTVM represents 1.79% of the 945,000 person reference population for WTVM. The FCC's initial DTV allotments resulted in 0.1% new interference to WTVM. Hence, the cumulative interference to WTVM will be less than the allowable maximum of 10%.

All FCC protection criteria with respect to existing DTV allotments and NTSC stations are fulfilled. In particular, as mentioned earlier, the interference that would be caused to the maximization proposal for WALA-DT will be less than 2% of the allotment baseline population of 1,008,000 persons.

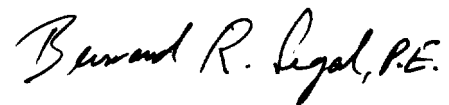
The proposed WPGX-DT 36 dBu, F(50,90) contour, without taking into account the WALA-DT maximization proposal, would serve 301,311 persons. The WALA-DT maximization proposal would cause interference to 9055 persons. Thus, the WPGX-DT facility would provide interference-free service within the 36 dBu contour to 292,256 persons. That population exceeds the Channel 29 allotment replication population of 211,00 persons by 81,256 persons.

A rule making is pending to allot Channel 8 to Panama City for use by station WJHG-DT in lieu of Channel 42. The proposed maximum effective radiated power is 27 kW and the antenna radiation center height above average terrain that is proposed is 265 meters. A directional antenna will be employed. The proposal has been reviewed for possible conflict with the instant proposal for the use of Channel 9 at Panama City. No conflict is believed to exist.

Studies were conducted in turn for each proposal, first without the other proposal being considered, and then, with the other proposal being considered. By this means, it was determined that the proposed WJHG-DT operation would not cause interference to the proposed WPGX-DT operation, and that the proposed WPGX-DT operation would cause interference to the proposed WJHG-DT operation to the extent of 5903 persons, representing 1.7% of the 344,833 persons within that portion of the noise limited 36 dBu contour that is not affected by terrain losses. If the same procedure is employed here as was employed for the situation involving the interference to the pending maximization proposal for WALA-DT, and the replication baseline population of 394,000 for WJHG-DT on Channel 42 is used for determining the percent affected, then the interference represents only 1.5 % of the reference. In either case, the interference is less than 2% of the de minimis threshold for mutual exclusivity concern.

The same calculation procedures, as employed in the initial WPGX-DT proposal supporting engineering material, were employed for this amendment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 13, 2001.

A handwritten signature in black ink, reading "Bernard R. Segal, P.E." in a cursive script.

Bernard R. Segal, P. E.

FIGURE 1

Dielectric

Proposal Number

Revision

Date

11 Apr 2001

Call Letters

WPGX-DT

Channel

9

Location

Panama City, FL

Customer

Antenna Type

THA-SP4-4/11-1

AZIMUTH PATTERN

RMS Gain at Main Lobe

2.40 (3.80 dB)

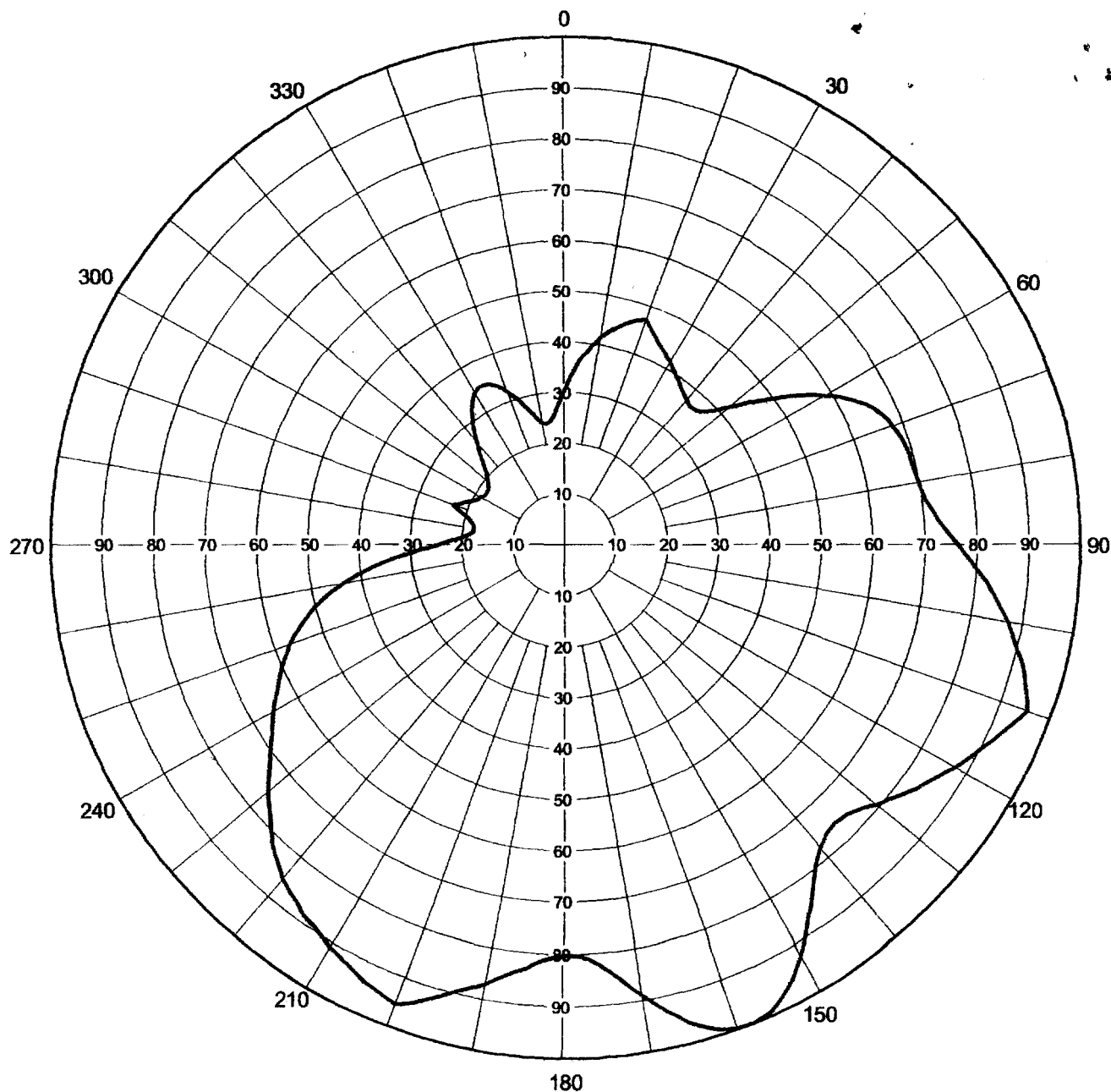
Frequency

189 MHz

Calculated / Measured

Calculated

Drawing #

THA-SP4-9

Remarks:

FIGURE 2



Proposal Number
 Date **11 Apr 2001**
 Call Letters **WPGX-DT** Channel **9**
 Location **Panama City, FL**
 Customer
 Antenna Type **THA-SP4-4/11-1**

TABULATION OF AZIMUTH PATTERN

Azimuth Pattern Drawing # **THA-SP4-9**

Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field	Angle	Field
0	0.301	45	0.373	90	0.764	135	0.760	180	0.803	225	0.808	270	0.246	315	0.219
1	0.313	46	0.379	91	0.774	136	0.758	181	0.804	226	0.796	271	0.234	316	0.226
2	0.326	47	0.386	92	0.785	137	0.759	182	0.808	227	0.785	272	0.222	317	0.234
3	0.339	48	0.396	93	0.796	138	0.762	183	0.813	228	0.774	273	0.211	318	0.243
4	0.352	49	0.408	94	0.808	139	0.768	184	0.820	229	0.764	274	0.202	319	0.252
5	0.365	50	0.420	95	0.821	140	0.776	185	0.829	230	0.754	275	0.194	320	0.261
6	0.375	51	0.435	96	0.830	141	0.785	186	0.835	231	0.742	276	0.188	321	0.271
7	0.385	52	0.452	97	0.840	142	0.796	187	0.842	232	0.730	277	0.183	322	0.281
8	0.395	53	0.469	98	0.851	143	0.809	188	0.850	233	0.719	278	0.180	323	0.291
9	0.404	54	0.486	99	0.862	144	0.824	189	0.859	234	0.709	279	0.178	324	0.301
10	0.414	55	0.504	100	0.873	145	0.840	190	0.870	235	0.699	280	0.179	325	0.310
11	0.422	56	0.521	101	0.882	146	0.856	191	0.877	236	0.689	281	0.178	326	0.319
12	0.429	57	0.539	102	0.891	147	0.873	192	0.884	237	0.680	282	0.179	327	0.327
13	0.436	58	0.556	103	0.900	148	0.890	193	0.893	238	0.671	283	0.182	328	0.334
14	0.443	59	0.572	104	0.910	149	0.907	194	0.901	239	0.663	284	0.185	329	0.341
15	0.450	60	0.588	105	0.919	150	0.924	195	0.910	240	0.655	285	0.189	330	0.346
16	0.456	61	0.603	106	0.927	151	0.939	196	0.919	241	0.646	286	0.196	331	0.349
17	0.460	62	0.617	107	0.934	152	0.953	197	0.928	242	0.637	287	0.203	332	0.351
18	0.465	63	0.629	108	0.941	153	0.965	198	0.937	243	0.629	288	0.211	333	0.352
19	0.469	64	0.641	109	0.948	154	0.976	199	0.946	244	0.621	289	0.220	334	0.352
20	0.474	65	0.651	110	0.955	155	0.985	200	0.954	245	0.613	290	0.229	335	0.350
21	0.466	66	0.660	111	0.946	156	0.992	201	0.950	246	0.605	291	0.223	336	0.347
22	0.459	67	0.667	112	0.938	157	0.997	202	0.945	247	0.596	292	0.217	337	0.342
23	0.452	68	0.673	113	0.929	158	1.000	203	0.941	248	0.587	293	0.211	338	0.337
24	0.445	69	0.678	114	0.921	159	1.000	204	0.937	249	0.578	294	0.206	339	0.330
25	0.439	70	0.681	115	0.913	160	0.998	205	0.934	250	0.569	295	0.202	340	0.322
26	0.434	71	0.685	116	0.905	161	0.994	206	0.928	251	0.559	296	0.197	341	0.315
27	0.429	72	0.688	117	0.897	162	0.989	207	0.922	252	0.549	297	0.194	342	0.307
28	0.424	73	0.691	118	0.889	163	0.981	208	0.917	253	0.537	298	0.190	343	0.298
29	0.420	74	0.693	119	0.882	164	0.971	209	0.913	254	0.525	299	0.188	344	0.289
30	0.416	75	0.694	120	0.875	165	0.960	210	0.910	255	0.513	300	0.187	345	0.281
31	0.411	76	0.695	121	0.866	166	0.947	211	0.904	256	0.499	301	0.184	346	0.272
32	0.405	77	0.695	122	0.857	167	0.933	212	0.898	257	0.485	302	0.182	347	0.263
33	0.401	78	0.696	123	0.849	168	0.919	213	0.893	258	0.470	303	0.181	348	0.256
34	0.396	79	0.697	124	0.841	169	0.903	214	0.889	259	0.454	304	0.182	349	0.249
35	0.393	80	0.699	125	0.834	170	0.888	215	0.885	260	0.438	305	0.183	350	0.244
36	0.387	81	0.701	126	0.824	171	0.872	216	0.878	261	0.419	306	0.182	351	0.241
37	0.382	82	0.704	127	0.815	172	0.858	217	0.872	262	0.401	307	0.183	352	0.240
38	0.379	83	0.708	128	0.807	173	0.844	218	0.866	263	0.381	308	0.185	353	0.242
39	0.376	84	0.714	129	0.800	174	0.832	219	0.860	264	0.361	309	0.188	354	0.246
40	0.374	85	0.721	130	0.794	175	0.822	220	0.855	265	0.341	310	0.192	355	0.252
41	0.370	86	0.727	131	0.783	176	0.813	221	0.845	266	0.321	311	0.196	356	0.259
42	0.367	87	0.734	132	0.774	177	0.806	222	0.836	267	0.302	312	0.200	357	0.267
43	0.367	88	0.743	133	0.767	178	0.802	223	0.826	268	0.283	313	0.206	358	0.277
44	0.369	89	0.753	134	0.763	179	0.801	224	0.817	269	0.264	314	0.212	359	0.289

Remarks:

FIGURE 3

Dielectric

Proposal Number

Revision

Date

11 Apr 2001

Call Letters

WPGX-DT

Channel

9

Location

Panama City, FL

Customer

Antenna Type

THA-SP4-4/11-1

ELEVATION PATTERN

RMS Gain at Main Lobe

3.5 (5.44 dB)

Beam Tilt

0.00 Degrees

RMS Gain at Horizontal

3.5 (5.44 dB)

Frequency

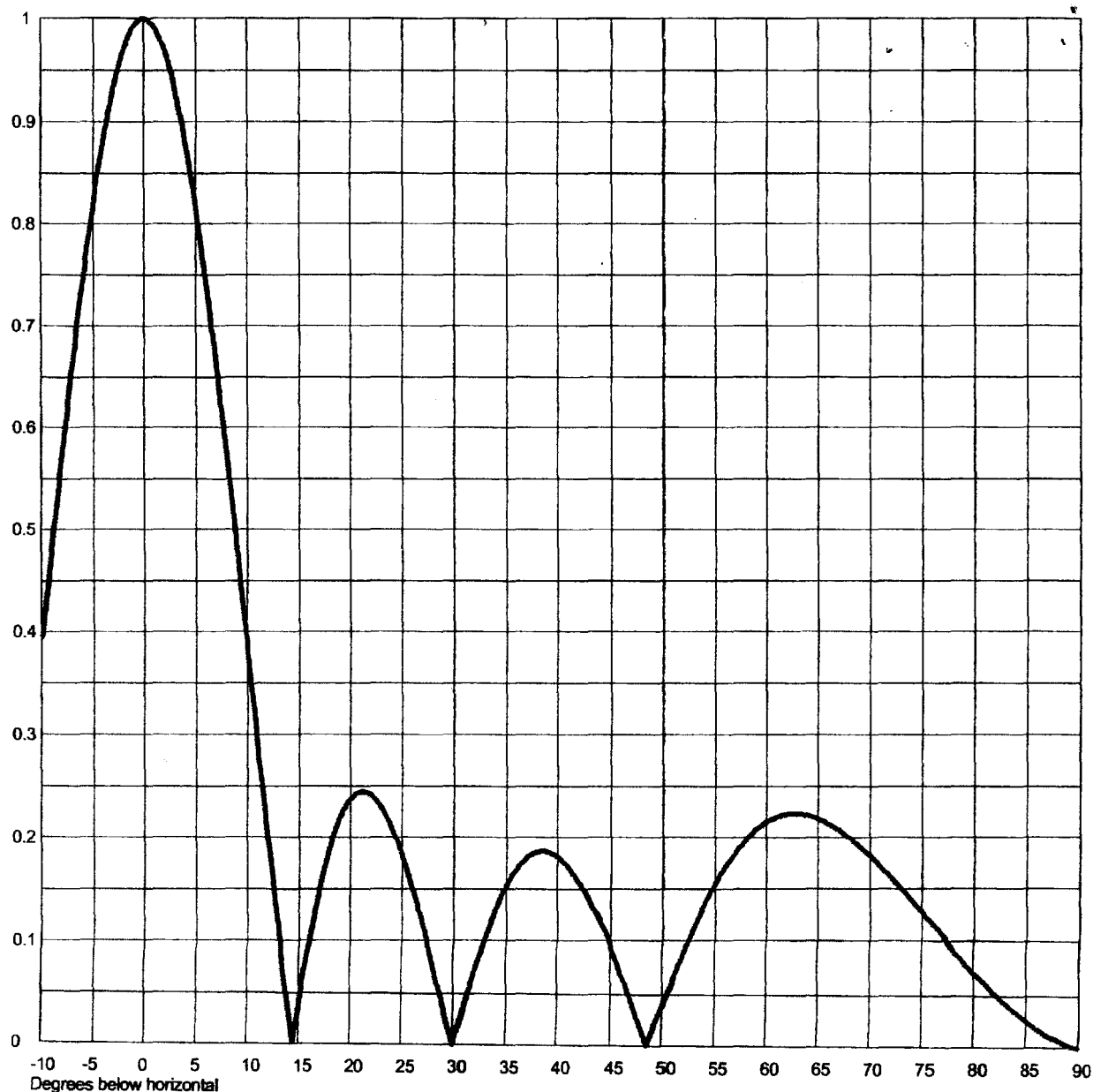
189.00 MHz

Calculated / Measured

Calculated

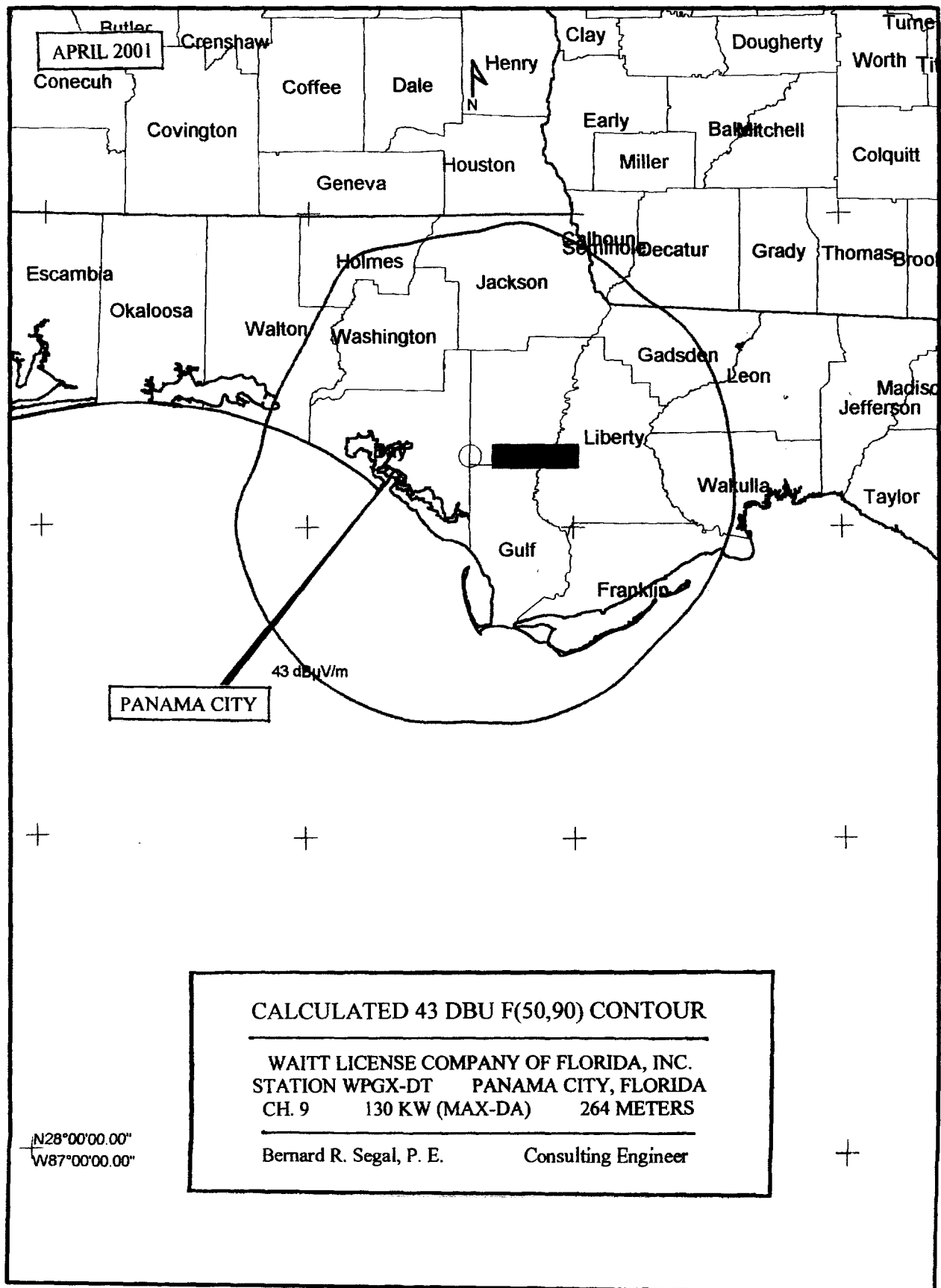
Drawing #

04H035000-90



Remarks:

FIGURE 4



CERTIFICATE OF SERVICE

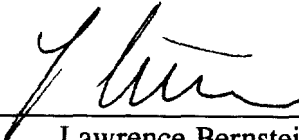
I hereby certify that I have, this 16th day of April, 2001, served copies of the foregoing "Supplement to Petition for Rule Making" upon the following persons via first class United States mail, postage prepaid:

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